



U.S. Department of Justice

Immigration and Naturalization Service

B3

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: TEXAS SERVICE CENTER

Date: FEB 27 2003

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

IN BEHALF OF PETITIONER:

[REDACTED]

PUBLIC COPY

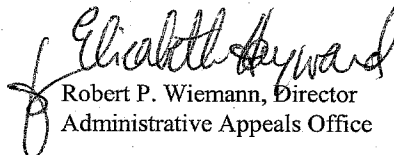
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an institution of higher education. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary in the United States as a senior research scientist in the field of viticulture. The director denied the petition, stating that the petitioner had not shown that the position offered to the beneficiary was permanent, or that the beneficiary had earned international recognition as an outstanding researcher.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C) . . .

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if

--

- (i) the alien is recognized internationally as outstanding in a specific academic area,
- (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. § 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

- (i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition . . .

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. . . ; and

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

The first issue is whether the petitioner has offered the beneficiary a permanent research position.

8 C.F.R. § 204.5(i)(2) states “[p]ermanent, in reference to a research position, means either tenured, tenure-track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.”

The petition includes a letter to the beneficiary from Dr. Bobby R. Phills, dean and director of Land-Grant Programs for the petitioning institution, offering the beneficiary “a permanent position as Senior Research Scientist in the Center for Viticulture and Small Fruit Research.” In a separate letter, Dr. Phills refers to the position as “tenure track.”

The director subsequently instructed the petitioner to submit an “employment contract and letter stating the position title, tenure requirements, salary, and any other terms and conditions of employment.” In response, the petitioner has submitted a new letter from Dr. Phills. Dr. Phills states “[t]his position meets the definition of a permanent position in that it is for an indefinite or unlimited duration and [the beneficiary] will have the expectation of continued employment unless there is good cause for termination” (emphasis in original). Dr. Phills indicates that “we have not yet entered into a new written contract with” the beneficiary, but that the petitioner “will do so when the H-1B petition is approved and she has status for an additional three years.” Dr. Phills refers to the petitioner’s then-pending H-1B nonimmigrant visa petition filed on the beneficiary’s behalf, to facilitate the beneficiary’s employment as a senior research scientist for a term of three years “at a proposed salary of \$52,000 per year.” Dr. Phills emphasized that the H-1B nonimmigrant petition was not a sign that the petitioner seeks to employ the beneficiary on a temporary basis, but rather the petition was filed “to bridge the period between [the beneficiary’s] J-1 Visiting Scholar status and her eventual Lawful Permanent Residence.”

In denying the petition, the director stated:

The petitioner submitted a letter from [its] Dean and Director of Land Grant Programs, dated 5/6/02, stating that the beneficiary would be employed for a period of indefinite or unlimited duration. However, the petitioner also stated that the department has filed an H1B nonimmigrant visa [petition] to employ her . . . at a *proposed* salary. . . . The petitioner has not even clearly identified which department would be paying her salary.

On appeal, the petitioner submits another copy of [redacted] above letter, and documentation of the approval of the aforementioned H-1B petition. The regulation at 8 C.F.R. § 204.5(i)(3)(iii) specifies "[t]he offer of employment shall be in the form of a letter from" a qualifying employer. The petitioner has supplied such a letter, specifically the letter from [redacted] which accompanied the initial filing. The director has not explained why the petitioner's letter is not satisfactory. Certainly, additional evidence (such as a copy of a contract) would be required if the initial evidence were ambiguous, or if it suggested that the position offered were temporary (e.g., if the job offered were a post-doctoral fellowship, which is almost always temporary in nature). In this instance, however, the job offer letter unambiguously refers to the position as a permanent one, [redacted] has elsewhere deemed the position to be "tenure track." There is no indication that the beneficiary's appointment has an expiration date or renewal date, either of which would show that the employment will automatically terminate unless the employer intervenes to extend it.

The director's evident objections, such as the emphasis on the term "proposed salary" and the petitioner's failure to identify the department funding the beneficiary's position, have no clear bearing on the question of whether the beneficiary's position is permanent. The petitioner has met the regulatory requirement by submitting a job offer letter, offering the beneficiary permanent employment, and the director has adduced no evidence to cast doubt on the credibility of this letter. Therefore, we withdraw the director's finding regarding the permanent nature of the position offered.

The remaining issue to be decided is whether the petitioner has shown that the beneficiary has earned international recognition as an outstanding researcher.

Service regulations at 8 C.F.R. § 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of documentation fulfilling at least two of six specified criteria. The petitioner claims to have met the following criteria:

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

Dr. Phillips states:

[The beneficiary] is a voting professional member of the American Society for Enology and Viticulture in California. Furthermore, she was duly elected as a Professional Member of the American Society for Enology and Viticulture and is a Member of the Society for In Vitro Biology. [The beneficiary] has also been an active member in the New York Academy of Sciences since 1995. She is also a certified member of the American Society for Horticultural Science and has participated in the International Symposium on Grapevine Physiology and Biotechnology in Greece.

Participation in a symposium is not membership in an association. With regard to the other claimed memberships, the petitioner must not only establish that the beneficiary is a member of the named associations, but also that those associations require outstanding achievements of their members.

[REDACTED] claims that the initial submission includes "copies of the applicable rules and policies on membership qualifications" to demonstrate that the associations "require outstanding achievements of their members." The only document in the record, however, that specifies membership requirements for any organization is the Constitution of the American Society for Enology and Viticulture. Article III, section 2 of this document states:

Any persons who have had training and experience in enology or viticulture will be considered for Professional membership if they meet the requirements of one of the following categories: (a) he or she shall have received a bachelor degree, graduate or the equivalent degree . . . in a field useful to enology or viticulture . . . or (b) . . . he or she shall have completed five years, of competent service in a professional position in commercial production, technology or in research in enology or viticulture.

In exceptional cases, persons distinguished by outstanding contributions to enology or viticulture and who may not fulfill one of the above qualifications may be elected a Professional member by unanimous vote of the Board of directors.

While the above requirements mention "outstanding contributions," they also make clear that the "outstanding contributions" clause is only to be invoked in "exceptional cases" and is not a basic requirement. Membership is open to "[a]ny persons" with a relevant degree or five years of relevant experience, neither of which constitutes an outstanding achievement.

The petitioner submits a copy of the Constitution of the Society for In Vitro Biology, taken from the society's web site (www.sivb.org). Article III of this document lists the various categories of membership, but does not show the requirements for each category. Instead, the Constitution refers the reader to Article I of the Bylaws (which the petitioner has not submitted).¹

¹ The Bylaws of the Society for In Vitro Biology are available to the general public via the same web site used by the petitioner. The Bylaws are located at http://www.sivb.org/mem_bylaws.asp. Section 1A of the Bylaws states "[a]ny person interested in the mission of the SOCIETY may become a Regular Member upon application and payment of annual dues." Also available via the Internet are the membership requirements for the other associations named. The web site of the New York Academy of Sciences states at <http://www.nyas.org/services/> that "[m]embership is

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

With regard to this criterion, [REDACTED] states:

[The beneficiary's] work has been the subject of published materials by others in her academic field.

For example, attached as exhibits are copies of the following publications: three separate articles published in *Vitis: Journal of Grapevine Research* which reference [the beneficiary's] work; and Dennis Gray and Carole Meridith's article "Grape" published in *Biotechnology of Perennial Fruit Crops*, which references [the beneficiary's] work.

The references above consist of citations, in which researchers have drawn from the beneficiary's work and identified it via bibliographic endnotes. Such citations are common in scholarly writings; a given research article may contain fifty or more citations. It does not follow that the article containing the citations is "about" the work of the authors of the many cited articles. Rather, the article is "about" a particular area of inquiry for which the cited articles served as resources. The beneficiary's textbook chapter, "Genetically Engineered Grape For Disease and Stress Tolerance," from *Molecular Biology & Biotechnology of the Grapevine*, is not "about" the works of G.N. Agrios, L. Destefano-Beltran, or the hundred or more other cited authors. The chapter is about genetically engineered grapes. The purpose of this regulatory criterion is not to show that others have cited the beneficiary's work in scholarly articles, but rather to demonstrate that the beneficiary's work is of such importance that it has attracted the attention of the media or the trade press.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

[REDACTED] claims that the beneficiary meets this criterion "by virtue of her numerous publications." Publications, however, fall under a separate criterion, below. [REDACTED] argues that the beneficiary's work must be original or else it would not have been published. Thus, in effect, Dr. Phills argues that authorship of scholarly books or articles is inherently an original research contribution to the academic field. This claim is untenable. Because the regulations require fulfillment of only two criteria, the assertion that published materials are *prima facie* original

open to all active professional scientists, physicians, students, and other individuals who share the Academy's interests." The petitioner has submitted a printout of a page from the American Society for Horticultural Science's site, <http://www.ashs.org/what.html>, and thus the petitioner is demonstrably aware of the site's existence. The page submitted by the petitioner includes a link to a "Membership Info" section. A page in that section, <http://www.ashs.org/membership/individual.html>, states "[a]ctive membership is available to any individual interested in horticultural education, research and application." Clearly, none of these associations requires outstanding achievements of its members, and they make no secret of their open membership policies.

contributions is tantamount to the assertion that every published researcher qualifies as outstanding, making the separate "original contributions" criterion entirely superfluous and useless as a means of distinguishing outstanding researchers from others in the field.

The regulations contain separate requirements for scholarly publications and original contributions, proving that the Service considers the categories to be distinct and not interchangeable; neither implies the other. While a researcher can certainly make original contributions that are the subject of published articles, it does not follow that every published article represents an original contribution demonstrative of outstanding research or an international recognition. If we were to hold otherwise, then every alien who has published a scholarly article in an internationally circulated journal would automatically qualify as outstanding, which would clearly go against the intent of the regulations.

If the petitioner seeks to satisfy this criterion, the petitioner must show not only that the beneficiary has conducted original research, but also that such research has won international recognition as outstanding. Originality itself is a necessary but not sufficient condition, which by itself neither confers nor ensures such recognition.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

As noted above, the beneficiary has produced a significant amount of published scholarly material, some of which has appeared in journals that appear to circulate internationally. Other articles appeared either in national publications, or in local ones such as *Grape Times*, "the official publication of the Florida Grape Growers Association." The petitioner satisfies this criterion.

The director requested additional evidence to establish that the beneficiary has earned international recognition as an outstanding researcher. The director instructed the petitioner to submit citation records for the beneficiary's published work, as well as other evidence such as documentation of awards received by the beneficiary.

In response, counsel cites four claimed awards, all of which are grants or fellowships intended to further the beneficiary's professional training. Two of the awards were given to the beneficiary by the petitioning university, several months after the filing of the petition. The petitioner has not shown that any of these represent major international awards as specified by 8 C.F.R. § 204.5(i)(3)(1)(A). The petitioner documents the research grants that have funded the beneficiary's various projects, but the petitioner has not shown that grant funding is, intrinsically, a sign of recognition, or that the beneficiary is responsible for securing such funding at a level that signifies international recognition as an outstanding researcher.

With regard to citation of the beneficiary's work, the petitioner indicates two book chapters and five articles that cite the beneficiary's published work. Asked specifically for citation records since 1995, the petitioner does not produce these records, but instead asserts that the beneficiary's "research . . . will likely yield peer reviewed articles at a later date." Because the

issue was the rate at which other researchers cite the beneficiary's work, it is something of a *non sequitur* to discuss the length of time that it takes the beneficiary to prepare an article of her own.

The materials submitted in response to the director's request, including letters from several of the beneficiary's collaborators, show that the beneficiary has been an active and productive researcher, but they do not demonstrate that the beneficiary stands above her peers to an extent that she has won international recognition as an outstanding researcher.

The director denied the petition, stating "[t]he petitioner has demonstrated that the beneficiary is a steady, determined, hard-working researcher in the field of viticulture but this evidence does not show that she has achieved either national or international recognition in the field." The director stated that the petitioner had failed to establish the significance of much of the evidence submitted.

On appeal, counsel contends that the director failed "to consider competent evidence" in the form of "a scholarly reference book co-authored by the Beneficiary which was not mentioned in the denial," and that the director "invent[ed] new and utterly harsh standards for evaluating competent evidence." The reference book in question is *Molecular Biology & Biotechnology of the Grapevine*, published in 2001. The beneficiary is one of five co-authors of chapter 16, "Genetically Engineered Grape for Disease and Stress Tolerance." In total, 41 authors contributed to the book.

Prior to the denial of the petition, the petitioner had offered no indication that this book is especially significant in comparison to the other evidence in the record, or that the beneficiary's contribution as co-author of one chapter either reflects or bestows international recognition in the field. We have already, above, found that the petitioner has satisfied the criterion pertaining to scholarly articles and books. Evidence of the beneficiary's authorship of additional articles and books does not appreciably add to the record, unless the petitioner supplies objective evidence that the newly-emphasized published material is so significant as to demonstrate international recognition. The director's failure to single out this book from the literally hundreds of documents in the record of proceeding is not, as counsel contends, tantamount to "pretending it does not exist."

The petitioner submits a copy of what appears to be a ribbon or small banner, which reads "*Prix de l'Office International de la Vigne et du Vin (O.I.V.) 2002*," translated as "Prize of the International Office of Vine and Wine 2002." Counsel states that the prize was awarded in June 2002 to "the authors," presumably all of them, of *Molecular Biology and Biotechnology of the Grapevine*. The materials submitted by the petitioner establish only that the prize exists, not who received it or why. Also, if this prize was awarded only in June 2002 as claimed, then it plainly cannot establish the beneficiary's international recognition as of the petition's November 2001 filing date.

Some of counsel's arguments on appeal repeat prior arguments, such as the assertion that the beneficiary's research grants establish international recognition. Because we have already addressed these arguments, further discussion of these points would be redundant. Other assertions on appeal are either irrelevant or tangential, such as counsel's unsubstantiated assertion that "the wine industry in Bulgaria is among the world's leaders." This statement, even if proven to be true, does not in any way imply that the beneficiary enjoys a degree of international recognition merely by virtue of being Bulgarian.

Counsel asserts that the director erred by requiring that every piece of evidence must establish both outstanding ability and international recognition. Counsel states that the proper standard would be to judge the record as a whole, even if some evidence, for instance, shows the petitioner to be outstanding but does not address international recognition. As a general assertion, counsel's statement represents a reasonable standard. The director's findings, however, do not appear to amount to an arbitrarily harsh re-working of the regulatory standards. Rather, the director explained why various exhibits in the record do not establish the required recognition.

Viewing the record as a whole (which counsel deems to be the proper standard) shows that the beneficiary has been an active and productive researcher, who has earned some degree of respect in her chosen field, but the record also shows that the petitioner and counsel have relied on unsupported claims in order to present the beneficiary in a more favorable light than the evidence itself warrants. For instance, we have already discussed the membership requirements of several organizations which, according to counsel, require outstanding achievements of their members. The membership requirements of these organizations are available to the public, and plainly demonstrate that none of the associations require outstanding achievement as a condition for membership. Whether these membership requirements were subjected to innocent error or deliberate misrepresentation, the claim that the beneficiary belongs to associations that require outstanding achievements of their members collapses upon inquiry and inevitably raises deeper questions of the overall credibility and reliability of other representations in the record. These questions are the inevitable result of viewing the record as a whole.

The petitioner has submitted a very substantial quantity of evidence in support of the petition at hand. The outcome of this appeal rests not on any deficiency in the quantity of evidence, but rather on the character of the evidence submitted. While the beneficiary is well-regarded by those with whom she has worked both in the U.S. and abroad, the record does not demonstrate that the beneficiary has earned international recognition as an outstanding researcher in the fields of viticulture and enology. The beneficiary may well achieve such recognition at some future time, but this petition is, at best, premature.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

